

IN THE COURT OF APPEALS OF IOWA

No. 7-106 / 06-1139

Filed April 11, 2007

RODNEY LEE HOUSHOLDER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Appanoose County, James Q. Blomgren, Judge.

Applicant appeals the district court's denial of his request for postconviction relief. **AFFIRMED.**

Autumn L. Canny of Kiple, Deneffe, Beaver, Gardner & Zingg, L.L.P., Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Robert F. Bozwell, Jr., County Attorney, for appellee.

Considered by Miller, P.J., and Baker, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.

In this postconviction relief appeal, we are asked to decide if the applicant's counsel was ineffective in failing to conduct further investigation into the applicant's mental status and condition. We agree with the district court that counsel was not ineffective and affirm.

I. Background Facts & Proceedings

Lieutenant George Johnson of the Centerville Police Department testified that on July 18, 2002, he accompanied the applicant, Rodney Housholder, to his residence to pick up some items prior to Housholder reporting to jail on other charges. Housholder began crying and asked Johnson to shoot him. Housholder pulled a machete from a closet, raised it above his head and came toward Johnson yelling, "Kill me, or I'm going to kill you." Housholder then pointed the knife at Johnson's stomach and said, "Shoot me right here, or I'm going to kill you." Housholder later relinquished the machete to Johnson and was arrested. Housholder was charged with assault on a peace officer while using or displaying a dangerous weapon.

Housholder filed notice of his intent to raise a defense of temporary insanity and/or diminished capacity. At the criminal trial Housholder testified he had been diagnosed with depression anxiety disorder, and was on medication for depression. He also testified that he had medical problems, was unemployed, and separated from his wife. Housholder stated he did not have any intention to harm Johnson, but wanted to commit suicide by having Johnson kill him.

The jury was instructed on Housholder's claim of temporary insanity. The jury found Housholder guilty of the crime charged. Housholder was sentenced to a term of imprisonment not to exceed five years. He appealed, and his conviction was affirmed on appeal. See *State v. Housholder*, No. 03-0387 (Iowa Ct. App. Feb. 11, 2004).

Housholder filed an application for postconviction relief, claiming he received ineffective assistance because his trial counsel did not fully investigate his mental status at the time of the incident. Housholder claimed he asked for an independent mental health evaluation, and his counsel refused his request. Housholder also claimed he received ineffective assistance from appellate counsel because this issue was not raised in the direct appeal.

Following a trial the district court denied Housholder's application for postconviction relief. The court found trial counsel made a significant effort to evaluate Housholder's mental status. The court concluded there was overwhelming evidence of Housholder's guilt and his trial and appellate attorneys did not fail in any of their essential duties. Housholder appeals.

II. Standard of Review

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). We presume that counsel is competent and that the attorney's conduct falls within the wide

range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

III. Merits

Housholder asserts he received ineffective assistance because his counsel failed to adequately investigate the issue of insanity or incompetence.¹ He claims a 2002 evaluation by Dr. Curtis Frederickson, a psychiatrist with the Iowa Medical and Classification Center (IMCC) stated, “The VA diagnosed him with PTSD but he did not necessarily agree.”² Housholder believes this should have alerted trial counsel to the possibility he had post-traumatic stress disorder (PTSD) and further investigation was necessary.

Housholder presented evidence that in 2004, Michael Davis, a psychotherapist, diagnosed him with PTSD. Davis testified Housholder probably had PTSD in 2002 during the incident, and stated, “he was reacting to incredible emotional stress and strain and was not behaving in a manner that he would ordinarily behave in when he’s not in that stressed hypervigilant state of mind.” Significantly, Davis did not offer an opinion that Housholder was unable to

¹ On appeal, the State claims diminished responsibility would not be a viable defense in this case, because assault is a general intent crime. This issue was not raised before the district court, and we do not consider it on appeal. See *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002).

However, Housholder’s brief only asserts insanity and incompetence as consequences of counsel’s inadequate investigation, with but one isolated reference to diminished responsibility. We consider any claim regarding diminished responsibility to have been waived. See *Line R. Co. v Iowa Dep’t of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) (“A litigant’s random mention of an issue, without elaboration or supportive authority, is not sufficient to raise the issue for our review.”)

² It is unclear whether this reference in the report is what Housholder *claims* the VA told him and that Housholder did not agree with it, or that the VA actually *made* such a diagnosis.

differentiate between right and wrong, or that he was unable to assist in his own defense at trial.

Housholder had been treated for many years at the Veterans Administration Hospital. His trial counsel, John Silko, testified he reviewed all of Housholder's records from the Veterans Administration Hospital and found the records did not provide a diagnosis of any significant mental health issues other than depression. Silko testified he also arranged for Housholder to have an evaluation at the IMCC, where he was found to have anxiety and depression. Silko had no recollection of Housholder asking for an independent evaluation in addition to that at the IMCC.

We agree with the district court's conclusion that trial counsel adequately investigated Housholder's mental health status. Silko's principal defense centered on the absence of any intent by Housholder to harm the officer; rather he was attempting "suicide by cop." However, Silko reviewed Housholder's records at the Veterans Administration Hospital and found "nothing in my view that would in any way be classified as the type of mental condition that would support either a diminished capacity or a temporary insanity defense." Silko also went on to arrange for an independent evaluation of Housholder at the IMCC. Again, the evaluation found Housholder had depression and anxiety, but there was no finding of a serious mental problem. Even psychotherapist Davis did not opine that Housholder met the definition of insanity or that he was incompetent to stand trial.

We disagree with Housholder's argument that the single, ambiguous statement in the IMCC evaluation that Housholder had been diagnosed with PTSD by the Veterans Administration in the past required trial counsel to conduct a further investigation. See *Schrier v. State*, 347 N.W.2d 657, 662-63 (Iowa 1984) (recognizing counsel's duty to investigate is not limitless and is partly judged by the primary theory of defense chosen). Silko had already examined the Veterans Administration records and found no corroboration.

We conclude Housholder has failed to show his trial counsel failed to perform an essential duty. We also conclude Housholder failed to show he received ineffective assistance from appellate counsel for failing to raise this issue on direct appeal. We affirm the decision of the district court denying Housholder's application for postconviction relief.

AFFIRMED.